UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT

Plaintiffs,

vs.

B.F., a minor, JAMES F. and LISA F.,

Defendant.

Case No. CV-06-1539 CAS (JTLx)

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Antelope Valley Union High School District ("the District") filed the instant suit on March 13, 2006 against defendants B.F., a minor, and her parents James F. and Lisa F (collectively, "defendants"). The suit arises under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq. The District seeks judicial review of an administrative "due process hearing," held pursuant to 20 U.S.C. § 1425, in which the Administrative Law Judge ("ALJ") found in favor of defendants. The District's complaint alleges that the ALJ's decision was arbitrary and capricious, and that the ALJ applied the wrong burden of proof and made erroneous findings of fact.

The parties filed their respective motions for summary judgment on January 19, 2007. Defendants filed an opposition to plaintiff's motion on February 12, 2007. Plaintiff filed an opposition on February 16, 2007. Defendants filed a reply on February 23, 2007.[1] The parties' motions are presently before the Court. The Court hereby finds and concludes as follows:

II. STATUTORY FRAMEWORK OF THE IDEA

The IDEA provides federal funds to assist state and local agencies in educating children with disabilities. 20 U.S.C. § 1412; Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1469 (9th Cir. 1993). The purpose of the IDEA is to provide all children with disabilities "a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities . . . ." 20 U.S.C. § 1400(d). This purpose is implemented through development of individualized education plans, which are crafted by a team including a student's parents, teachers, and the local educational agency. 20 U.S.C. § 1414(d). The document prepared by the team contains the student's current level of performance, annual goals, short and long term objectives, specific services to be provided and the extent to which the student may participate in regular educational programs, and criteria for measuring the student's progress. Id. The IDEA requires that educators also guarantee certain procedural safeguards to children and their parents, including notification of any changes in identification, education and placement of the student, as well as permitting parents to bring complaints about

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[1]In their reply, defendants objected to plaintiff's method of service of plaintiff's opposition. At oral argument, the parties informed the Court that defendants' objection was withdrawn pursuant to a stipulation between the parties.

matters relating to the student's education and placement, which may result in a mediation or a due process hearing conducted by a local or state educational agency hearing officer. 20 U.S.C. § 1415(b)-(i). Parents may bring a civil action in state or federal court in the event they are dissatisfied with the decision of an agency hearing officer. 20 U.S.C. § 1415(i)(2). The court, in considering a request for review of a hearing officer's decision, and "basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." Id.

In Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982), the Supreme Court held that the preponderance of the evidence standard in the IDEA "is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." Rowley at 206. "The requirement that the district court receive the hearing officer's record 'carries with it the implied requirement that due weight shall be given to these proceedings.' Id. The district court should review for procedural compliance with the statute, and for whether the program is reasonably calculated to enable the child to receive educational benefits. Therefore, a court's inquiry in suits brought under § 1415(i)(2) is twofold. "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." Capistrano Unified Sch. Dist. v. Wartenberg, 59 F.3d 884, 891 (9th Cir. 1995) (citing Rowley, 458 U.S. at 206-07).

"As construed by Rowley, a child receives a free appropriate public education if the program (1) addresses the child's unique needs; (2) provides adequate support services so the child can take advantage of the educational opportunities, and (3) is in accord with the individualized education program." Capistrano, 59 F.3d at 893 (citing Rowley, 458 U.S. at 188-89). The Ninth Circuit has held that an "'appropriate' public

education does not mean the absolutely best or 'potential-maximizing' education for the individual child ... The states are obliged to provide 'a basic floor of opportunity' through a program 'individually designed to provide educational benefit to the handicapped child.'" Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1314 (9th Cir. 1987) (quoting Rowley, 458 U.S. at 201).

III. FACTUAL BACKGROUND

B.F. originally qualified for special education services in 1993 as a pre-schooler due to a learning disability and speech and language difficulties. B.F. was placed in a special day class ("SDC") in Westside Union School District ("Westside") during preschool and kindergarten, after which an IEP team placed her in regular education class in the resource program. B.F. remained in regular education class until 2002, when she was again placed in SDC as a sixth grader. B.F. struggled academically and socially, began falling further behind in school, and was teased and bullied by other students.

In October of 2002, B.F.'s parents sought the professional advice of Dr. Jordan Witt ("Dr. Witt"), a pediatric neuropsychologist with a specialty in learning disorders. Dr. Witt diagnosed B.F. with attention deficit disorder, inattentive type, cognitive impulsivity, and an overall pattern of difficulty with executive skills. In October 2004, B.F.'s parents also consulted Nancy Kurtzer ("Kurtzer"), an independent speech pathologist, who noted that B.F. had "difficulty expressing herself in social situations," and that she had "significant" impairments in "social language."

Westside agreed to fund B.F.'s placement at Marianne Frostig Academy ("Frostig"), a certified non-public school in Westside. B.F. attended Frostig during the seventh and eighth grades, from September 2003 through June 2005.

Westside held a triennial IEP meeting on May 25, 2005, to determine B.F.'s placement for the 2005-2006 school year, when B.F. would enter the ninth grade. B.F.'s parents, Westside, and the other parties to the IEP agreed to place B.F. at Frostig again, and they signed the IEP reflecting that decision. The District had not been

invited to the May 25, 2005 IEP meeting. Thus, the May 25, 2005 IEP document stated that "[i]t was agreed that an IEP meeting should be reconvened to discuss transition to the high school district." The ALJ found that "the parties fully expected that [the District] would agree to the Frostig placement and accept responsibility for funding the placement." Vol. 6, Factual Finding 5.

The parties attended a "transitional" IEP meeting on June 30, 2005. The District contends that the June 30, 2005 IEP was derived entirely from the May 25, 2005 IEP, in which the District had no participation. The District's school psychologist, Eric Beam, informed B.F.'s parents that she would be placed at a public high school within the District, rather than Frostig. The June 30, 2005 IEP created by Beam provided that B.F. would attend four special education classes and two regular classes: physical education and literacy, or another elective. As noted by the ALJ, B.F.'s parents disagreed with the June 30, 2005 IEP, and "lacked confidence that the District could provide the same quality of services in terms of both the actual services specified in the May 25, 2005 IEP, and the environment in which they would be delivered." Vol. 6, Factual Finding 6. The District reiterated these proposals at an August 29, 2005 IEP meeting.

B.F.'s parents filed for a due process hearing.[2] Dr. Witt, Frostig's principal, B.F.'s teachers, and speech and language pathologists testified at the hearing. Beam and other District employees testified on behalf of the District. The ALJ concluded that "an evaluation of all the evidence presented in the present instance leads to the conclusion that none of the experts could state it is more likely than not that Student is ready to make the transition proposed by [the District]." Vol. 6, Legal Conclusion 1.

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[2]The parties lodged the transcript and decision of the due process hearing in B.F. v. Antelope Valley Union High School District, Case No. OAH N20005070756. For ease of reference, the Court will refer to the hearing transcript and decision by volume, page, and line number. The parties have separately faxed the May 25, 2005 IEP and June 30, 2005 IEP, and will file these documents as exhibits forthwith.

The ALJ further concluded that the "evidence presented in support of each party's position is in equipose," and that the District therefore "failed to meet its burden of persuasion justifying a change in placement at this time." Id.

IV. LEGAL STANDARDS

A. Legal Standard for Summary Judgment

Generally, summary judgment is appropriate where "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each cause of action upon which the moving party seeks judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

If the moving party has sustained its burden, the nonmoving party must then identify specific facts, drawn from materials on file, that demonstrate that there is a dispute as to material facts on the elements that the moving party has contested. See Fed. R. Civ. P. 56(c). The nonmoving party must not simply rely on the pleadings and must do more than make "conclusory allegations [in] an affidavit." Lujan v. National Wildlife Fed'n, 497 U.S. 871, 888 (1990). See also Celotex Corp., 477 U.S. at 324. Summary judgment must be granted for the moving party if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322. See also Abromson v. American Pac. Corp., 114 F.3d 898, 902 (9th Cir. 1997), cert. denied, 522 U.S. 1110 (1998).

In light of the facts presented by the nonmoving party, along with any undisputed facts, the Court must decide whether the moving party is entitled to judgment as a matter of law. See T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 631 & n.3 (9th Cir. 1987). When deciding a motion for summary judgment, "the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion." Matsushita Elec. Indus. Co.

v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation omitted); Valley Nat'l Bank of Ariz. v. A.E. Rouse & Co., 121 F.3d 1332, 1335 (9th Cir. 1997). Summary judgment for the moving party is proper when a rational trier of fact would not be able to find for the nonmoving party on the claims at issue. See Matsushita, 475 U.S. at 587.

B. Standard of Review Under the IDEA

The standard of review applicable to IDEA administrative proceedings is set by the statute itself. The IDEA provides that the court "(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(B); see generally Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1471-72 (9th Cir. 1993). The Court reviews de novo the appropriateness of a special education placement under the IDEA. Seattle Sch. Dist. No. 1 v. B.S., 82 F.3d 1493, 1499 (9th Cir. 1996); Livingston Sch. Dist. Nos. 4 & 1 v. Keenan, 82 F.3d 912, 915 (9th Cir. 1996). Despite the de novo standard of review, however, the Court is required to give due weight to the Hearing Officer's administrative findings and appropriate deference to the policy decisions of school administrators. The Ninth Circuit has articulated the deference to be given to the administrative findings as follows:

> The court reviews de novo the appropriateness of a special education placement under the IDEA. Nevertheless, when reviewing state administrative decisions, courts must give due weight to judgments of education policy[.] Therefore, the IDEA does not empower courts to substitute their own notions of sound educational policy for those of the school authorities which they review. Rather, the [c]ourt in recognition of the expertise of the administrative agency, must consider the findings carefully and endeavor to respond to the hearing officer's resolution of each material issue. After such consideration, the court is free to accept or

> reject the findings in part or in whole. Despite their discretion to reject the administrative findings after carefully considering them, however, courts are not permitted simply to ignore the administrative findings. At bottom, the court itself is free to determine independently how much weight to give the administrative findings in light of the enumerated factors. [internal citations and quotation marks omitted]

County of San Diego v. California Special Education Hearing Office, 93 F.3d 1458, 1466 (9th Cir. 1996).

In light of these principles, the Court considers whether summary judgment is appropriate.

C. Role of Summary Judgment in IDEA Administrative Appeals

The use of summary judgment to adjudicate challenges to administrative decisions under IDEA has been approved by the Ninth Circuit, despite the difficulty in deciding what are primarily factual disputes using the traditional summary judgment framework. In Capistrano Unified Sch. Dist. v. Wartenberg, 59 F.3d 884, 892, the Ninth Circuit discussed the procedural anomaly present here:

> Our opinion in Ojai explores the difficulty of using a summary judgment framework for what amounts to a resolution of conflicting evidence on the facts. In that case, as in many under the Act, disputed issues of fact exist. ... Ordinarily summary judgment could not issue, because of the genuine dispute. But if the district court tried the case anew, the work of the hearing officer would not receive 'due weight,' and would be largely wasted. ... Judge Canby pointed out in Ojai that what the court had done in that case really amounted to a trial de novo on a stipulated record. This puzzling procedural problem arises whenever the district court adjudicates administrative appeals, because the Federal Rules of Civil Procedure do

> not plainly speak to how such appeals should be handled. ... Because this appears to be what Congress intended under the Act, we conclude that it is the right thing to do, even though it does not fit well into any pigeonhole of the Federal Rules of Civil Procedure. Though the parties may call the procedure a 'motion for summary judgment' in order to obtain a calendar date from the district court's case management clerk, the procedure is in substance an appeal from an administrative determination, not a summary judgment.

Id. at 892.

Guided by the Ninth Circuit opinions in Ojai and Capistrano, the Court finds this matter to be appropriate for decision on the parties' cross-motions for summary judgment, in accordance with the standard of review set forth in Capistrano and Ojai.[3]

D. Burden of Proof

The burden of proof at the administrative due process hearing rests upon the party challenging the IEP. Schaffer v. Weast, 126 S. Ct. 528, 538 (2005). The ALJ placed the burden of proof on the District. In seeking review of the Hearing Officer's decision before the district court, the burden of proof is on the District, as the party challenging the administrative ruling. See Seattle Sch. Dist., No. 1, 82 F.3d at 1498 ("The School District had the burden of proving compliance with the IDEA at the administrative hearing, including the appropriateness of its evaluation, 34 C.F.R. S 300.503(b), and its proposed placement for A.S. As the party challenging the administrative ruling, the School District also had the burden of proof in district court.") (citing Clyde K. v. Puyallup Sch. Dist. No. 3, 35 F.3d 1396, 1399 (9th Cir.

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[3]Although the IDEA specifically provides for the Court's consideration of additional evidence in reviewing administrative decisions, neither party has sought to introduce additional evidence.

1994)). The Court, "basing its decision on a preponderance of the evidence, shall grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(e).

V. DISCUSSION

The District's argues that the ALJ erroneously assigned the District the burden of proof in the due process hearing, and that the District's IEPs were procedurally and substantively appropriate. Defendants contend that the ALJ came to the correct result, but erroneously found the evidence to be in "equipose." Defendants assert that, to the contrary, the evidence strongly suggests that the June 30, 2005 IEP was both procedurally and substantively inadequate.

A. Burden of Proof in the Due Process Hearing

The District contends that the ALJ incorrectly placed the burden of proof upon the District, rather than B.F. and her parents. The District argues that, under Schaffer v. Weast, 126 S. Ct. 528 (2005), the party challenging the IEP bears the burden of proof, and B.F. admitted that she was challenging the June 30, 2005 IEP. The District asserts that, because the ALJ found the evidence to be in "equipose," the District should therefore have prevailed because defendants bore the burden of proof at the due process hearing.

In Schaffer v. Weast, the Supreme Court held that "[t]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. . . . But the rule applies with equal effect to school districts: If they seek to challenge an IEP, they will in turn bear the burden of persuasion before an ALJ." Id. at 537. At the due process hearing, the ALJ assigned the burden of proof to the District because the District was the party challenging the last agreed upon IEP, the May 25, 2005 IEP. Vol. 6, Legal Conclusion 1.

Defendants argue that the ALJ correctly placed the burden of proof upon the District because B.F "was not challenging the May 2005 IEP, a lawful and fully signed IEP, but was challenging the unilateral rewriting of that document by the District in

violation of virtually ever[y] procedural safeguard afforded by IDEA. Instead of filing for due process on its own, the District decided simply to redo the May 25, 2005 IEP and create its own without assessing B.F. or even reviewing her records." Defendants' Opp'n at 6. Further, defendants contend that, even if the ALJ had placed the burden of proof upon them, the evidence strongly weighed in favor of finding the June 30, 2005 IEP inadequate.

Even assuming that the ALJ incorrectly placed the burden of proof upon the District, the District now, in this proceeding, has the burden to show that the evidence weighs in favor of the District. Upon independent review of the administrative record, the Court concludes that the evidence before this Court demonstrates that the June 30, 2005 and August 29, 2005 IEPs were substantively inadequate, and likely procedurally inadequate, as discussed below.

B. Procedural Requirements Under the IDEA

The Court must engage in a two-part inquiry to determine whether the District afforded B.F. a FAPE. First, the Court must determine whether the District complied with the procedures set forth in the IDEA. Second, the Court must determine whether the IEP developed through the IDEA's procedures was reasonably calculated to confer educational benefit upon B.F. Shapiro ex rel. Shapiro v. Paradise Valley Unified School Dist. No. 69, 317 F.3d 1072, 1079 (9th Cir. 2003), *superceded by statute on other grounds*. "Procedural flaws do not automatically require a finding of a denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE." Id. (quoting W.G. v. Bd. of Trustees, 960 F.2d 1479, 1484 (9th Cir.1992)).

Defendants contend that the District's IEPs were procedurally defective, in violation of numerous provisions of the IDEA and California law. In particular defendants assert that the District:

(1) predetermined its IEPs without a meaningful IEP meeting with B.F.'s family;
(2) failed to review existing evaluation data on B.F., and to determine what additional data were needed to determine what additions or modifications were necessary to enable B.F. to meet measurable goals set out in the IEP, in violation of 20 U.S.C. § 1414(c)(1)(A) and (B);
(3) failed to consider the most recent evaluation of B.F. in developing the IEP, in violation of 20 U.S.C. § 1414(d)(3)(A)(iii);
(4) failed to set forth in sufficient detail the services to be provided to B.F., in violation of 20 U.S.C. § 1414(d)(1)(A)(i)(IV);
(5) failed to properly constitute the IEP team, in violation of 20 U.S.C. 1414(d)(1)(B)(ii) and (iii);
(6) failed to comply with the transition plan requirements of California Education Code § 56345(b)(4).

Defendants contend that, prior to the June 30, 2005 IEP meeting, the District had already predetermined B.F.'s IEP, without meeting B.F. or interviewing any of her teachers at Frostig. The District argues that its June 30, 2005 IEP was not predetermined. At the due process hearing, Beam testified that, while he had "a suspicion of placement" at a public school prior to the June 30, 2005 meeting, he had not already decided whether B.F. should be placed at a public school. Vol. 1 at 34:2-24.

Prior to the June 30, 2005 meeting, the District apparently did not review the reports of Dr. Witt or Ms. Kurtzer. Rather, the District reviewed only the May 25, 2005 IEP, and skimmed Westside's records pertaining to B.F. Beam, who created the June 30, 2005 IEP, testified at the due process hearing that his decision was based solely upon the May 25, 2005 IEP and discussions at the June 30, 2005 IEP meeting. Vol. 1 at 58:11-13, 61:1-13. Beam did not seek to obtain any other records pertaining to B.F. Id. In contrast, the District's Special Education Director, and Beam's supervisor, Shandelyn Williams, testified that the appropriate procedure is for the

school district to request additional records in order to develop a program tailored to a child's unique needs. Vol. 2 at 154:2-20.

The June 30, 2005 and August 29, 2005 IEPs also failed to explain B.F.'s program with sufficient specificity. See Union School Dist. v. Smith, 15 F.3d 1519, 1526 (9th Cir. 1994) (a "formal, specific" offer of placement is required). Defendants argue that the IEPs also failed to specifically identify what non-SDC classes B.F. would take, and did not identify whether the "Speech and Language Service" of "2x30 minutes per week" would be given individually or in a group. There also appears to have been a great deal of confusion regarding which public school B.F. would attend under the District's IEPs. As defendants argue, these procedural defects likely deprived Lisa F. of the opportunity to participate meaningfully in her daughter's IEP, and likely deprived B.F. of the "educational opportunity of even knowing what kind of counseling the District was proposing for her." Defendants' Mot. at 18. Further, the District personnel assigned to provide B.F. with psychological counseling services and speech and language therapy were not present at either IEP meeting to answer defendants' questions. See Vol. 4 at 95-96, 124:1-4.

It appears to the Court that the procedural defects in the District's IEPs likely "result[ed] in the loss of educational opportunity" and "seriously infringe[d] [B.F.'s] parents' opportunity to participate in the IEP formulation process." See Shapiro, 317 F.3d at 1079. In any event, as discussed below, the District's IEPs were substantively inadequate to provide B.F. a FAPE.

C. Substantive Adequacy of the June 30, 2005 and August 29, 2005 IEPs

Although the procedural defects of the District's IEPs likely deprived B.F. of a FAPE, the Court further concludes that the District's IEPs were not reasonably calculated to confer educational benefit upon B.F.

Defendants argue that the District's IEPs were substantively inappropriate because they offered two general education classes, while the District submitted no evidence at the due process hearing regarding what these classes would entail, and

whether B.F. would benefit from them. Indeed, the District's speech pathologist testified that she did not believe B.F. would succeed in a regular education class, Vol. 4 at 123:2-5, although she also later opined that it could be "worth a try," Vol. 4 at 133:5-13.

At the due process hearing, the District asserted that its IEPs were appropriate because they would implement the May 25, 2005 IEP on a District campus, and the District's IEPs included the goals, objectives, and accommodations of the May 25, 2005. Defendants, however contend that the District's IEPs failed to implement the May 25, 2005 IEP. Specifically, the May 25, 2005 IEP provided that B.F.'s speech and language therapy would consist of two, 30 minute sessions per week of "individual/group" therapy, and provided for 60 minutes per week of "Group Social Skills Counseling." However, the District's IEPs did not specify whether speech and language therapy and counseling would be "individual" or "group." The District's own therapist testified that B.F. needs both individual and group speech therapy. Vol. 4 at 7:17, 118:3-7. Further, Nancy Kurtzer also testified that the District's placement of B.F. in a reading program designed for English as a second language was inappropriate for B.F.'s "double deficit dyslexia." Vol. 2 at 71-75, 84-88.

The District argues that, because the June 30, 2005 IEP was based upon the May 25, 2005 IEP, defendants' argument that the June 30, 2005 IEP is inappropriate actually implies that the May 25, 2005 is inappropriate. Id. at 13. The ALJ apparently shared the District's view that the June 30, 2005 IEP and May 25, 2005 IEP are substantially similar. See Vol. 2 at 142:2-13. The ALJ stated at the hearing that "[t]he only change the June IEP made [to the May IEP] was, we're going to provide this in a public setting. . . . The only question in my mind is, what's the evidence indicating which placement is appropriate under a FAPE and LRE?" Id. at 142-143. The Court agrees that the most important distinction between the May 25, 2005 IEP and the District's IEPs is whether B.F. would attend Frostig or a District public school.

Accordingly, the Court turns to the evidence regarding which placement would be more appropriate for B.F.

At the due process hearing, several witnesses testified that B.F. would not benefit from attending a large public high school, and that it would actually harm her. Lisa F. testified that B.F. had already attended a large middle school, but was teased and ostracized by the other students. Lisa F. also testified that B.F. could become "easily distracted" if she were to change classrooms for each subject, and would need extra time to reorient. Vol. 4 at 80:18-83:21. In contrast, Frostig did not require B.F. to change classrooms. Steven Petralia, a Frostig staff member who had spent "over 300 days with [B.F.] over the past two years," similarly testified that B.F.'s word retrieval difficulties would make it difficult for B.F. to interact with typical high school students. Vol. 1 at 97-102, 146-2-3. Toni Shahak, B.F.'s speech pathologist for two years, testified that B.F.'s impaired functional language skills cause B.F. to "bluntly say something without knowing the effect it's going to have on those around her, so that tends to keep others away from her." Vol. 4 at 13:2-6. Dr. Edith Salisbury, a clinical psychologist and B.F.'s counselor at Frostig during her first year, testified that B.F. is "an extremely vulnerable young woman" who would be at risk on a large campus. Vol. 3 at 98:7-99:13. Finally, Tobey Shaw, Frostig's principal, testified that the May 25, 2005 IEP team believed Frostig offered a more appropriate placement than a large high school, which would exacerbate B.F.'s anxiety and peer relationship problems. Vol. 3 at 34-35, 93.

The District contends that "none of the Defendants' witnesses knew anything about the District's proposed program; therefore, they could not opine about the appropriateness of the District's offer of a FAPE." Plaintiff's Opp'n at 9. However, defendants' witnesses testified regarding their extensive knowledge of B.F.'s unique needs and her ability to interact with others, and as such, their testimony is relevant. The District does not further address in its opposition the evidence regarding whether B.F. is ready for the transition to public school.

The Court concludes that, according to the evidence presented by the parties, a transition to a large public high school would be detrimental to B.F. Defendants' witnesses presented persuasive testimony at the due process hearing that B.F.'s social and language difficulties would significantly impair her functioning at a large public school. Accordingly, the District's IEPs were not reasonably calculated to confer educational benefit upon B.F., and therefore the District did not provide B.F. with a FAPE.

VI. CONCLUSION

In accordance with the foregoing, the Court GRANTS defendants' motion for summary judgment, and DENIES plaintiff's motion for summary judgment.

IT IS SO ORDERED.

Dated: February 26, 2007

CHRISTINA A. SNYDER
United States District Judge